

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

JULIUS BISHOP, JR.,

Plaintiff,

v.

Case No. 2:06-cv-00076

RITA ALBURY, Department of
Corrections Movement Coordinator,
WYETTA FREDERICKS, Regional Jail
Administrator,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

This matter was referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

Plaintiff filed a Complaint (docket sheet document # 3) and an Application to Proceed Without Prepayment of Fees (# 1) on February 2, 2006. On February 16, 2006, the undersigned United States Magistrate Judge submitted a Proposed Findings and Recommendation ("PF&R"), recommending that the presiding District Judge dismiss Plaintiff's Complaint, pursuant to 28 U.S.C. § 1915A and 42 U.S.C. § 1997e, on the basis that Plaintiff had not demonstrated that he had exhausted his administrative remedies concerning the claims alleged in the Complaint, and because the Complaint failed to state a claim upon which relief can be granted.

On February 21, 2006, Plaintiff filed objections to the PF&R on a Complaint form similar to that used to file the initial Complaint. (# 6). On March 16, 2006, the presiding District Judge declined to adopt the PF&R and again referred this matter to the undersigned for further development, including consideration of whether to permit Plaintiff's objections to act as the functional equivalent of a motion to amend. (# 7).

On March 27, 2006, mail addressed to Plaintiff was returned by the South Central Regional Jail (# 8), which prompted the undersigned's staff to contact the West Virginia Division of Corrections. The undersigned's staff learned that Plaintiff was transferred to the St. Mary's Correctional Center on March 8, 2006.

Plaintiff's Complaint concerns conditions of confinement at the South Central Regional Jail and requests that Plaintiff be transferred to a Division of Corrections facility. In light of Plaintiff's transfer to St. Mary's, it appears that Plaintiff's Complaint is now moot. Accordingly, Plaintiff was ordered to notify the court in writing of his intent to proceed with this case on or before May 1, 2006.

As of this date, the court has received no response from Plaintiff. Accordingly, the undersigned proposes that the presiding District Judge **FIND** that Plaintiff no longer wishes to prosecute this case. Thus, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter **without prejudice** and

DENY Plaintiff's Application to Proceed Without Prepayment of Fees (# 1).

Plaintiff is notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(a), Federal Rules of Civil Procedure, Plaintiff shall have ten days (filing of objections) and then three days (service/mailling) from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Copenhaver and this Magistrate Judge.

The Clerk is directed to file this "Proposed Findings and Recommendation" and to mail a copy of the same to Plaintiff.

May 11, 2006

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge